

# **Title 24 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

## **Subtitle 05 ECONOMIC DEVELOPMENT**

### **Chapter 12 Cellulosic Ethanol Technology Research and Development Tax Credit**

**Authority: Economic Development Article, §2-108; Tax General Article, §§2-103 and 10-726; Annotated Code of Maryland**

#### **.01 Purpose.**

This chapter describes the:

A. Requirements for a taxpayer to receive a certificate allowing it to claim a credit against the State income tax for Maryland qualified cellulosic ethanol research and development expenses; and

B. Procedures that will be used by the Department of Business and Economic Development to:

(1) Receive, review, evaluate, and approve or disapprove applications for tax credits; and

(2) Issue tax credit certificates.

#### **.02 Scope and Administration.**

The Department of Business and Economic Development administers the certification of the amount of the cellulosic ethanol technology research and development tax credit. The Comptroller of the Treasury administers the tax credit.

#### **.03 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Business entity" means a sole proprietorship, corporation, business trust, partnership, limited partnership, limited liability company, or other pass-through entity, or other entity doing business in the State.

(2) "Cellulosic ethanol technology" means technology that is used to develop cellulosic biomass for conversion to ethanol fuel.

(3) "Certificate" means a certificate issued by the Department stating the credit amount approved by the Department.

(4) "Comptroller" means the Maryland Comptroller of the Treasury, or the Comptroller's designee.

(5) "Credit" means the credit against the State income tax for Maryland qualified research and development expenses equal to the credit amount approved by the Secretary in a certificate.

(6) "Credit amount" means the amount in money approved by the Department with respect to a business entity's Maryland qualified research and development expenses and set out in a certificate.

(7) "Department" means the Department of Business and Economic Development.

(8) "Maryland qualified research and development expenses" means qualified research expenses, as defined in 26 U.S.C. §41(b) and 26 CFR §§1.41.0—1.41.8, as amended, which are incorporated by reference, paid or incurred for cellulosic ethanol technology research and development that is conducted in the State.

(9) "Research and development" means qualified research as defined in 26 U.S.C. §41(d) and 26 CFR §§1.41.0—1.41.8, as amended, which are incorporated by reference.

(10) "Secretary" means the Secretary of the Department, or the Secretary's designee.

(11) "State" means the State of Maryland.

(12) "Taxable year" means the period for which the taxpayer's State income tax return is filed, which shall be the same as that for which the taxpayer's federal income tax return is filed.

(13) "Taxpayer" means an individual, fiduciary, or business entity required to pay an income tax or file an income tax return with the State.

## **.04 Calculation of Tax Credit.**

A taxpayer may claim a credit against the State income tax in an amount equal to 10 percent of the Maryland qualified research and development expenses paid or incurred by the taxpayer during the taxable year.

## **.05 Calculation of Credit for Partial or Short Taxable Year.**

A. The Maryland qualified research and development expenses for a partial year taxpayer are:

- (1) The actual Maryland qualified research and development expenses incurred during the partial taxable year; or
- (2) The total Maryland qualified research and development expenses incurred during the entire taxable year multiplied by a fraction:
  - (a) The numerator of which is the number of days in the calendar year included in the partial taxable year; and
  - (b) The denominator of which is 365.

B. The partial or short year taxpayer may claim a credit against the State income tax in the amount of 10 percent of the Maryland qualified research and development expenses paid or incurred by the taxpayer during the taxable year.

## **.06 Maximum Annual Credits.**

The total amount of credits approved by the Department under this chapter may not exceed \$250,000 for any calendar year.

## **.07 Application—Required Information.**

A. By September 15 of the calendar year following the end of the taxable year in which the Maryland qualified research and development expenses were incurred, a business entity that paid or incurred Maryland qualified research and development expenses shall submit to the Department a completed application for certification on the form prescribed by the Department.

B. Cellulosic Ethanol Technology Research and Development Tax Credit Application. Each application shall include the following information:

- (1) The business entity's legal name and address;
- (2) The business entity's federal employer identification number;
- (3) The beginning and ending dates of the business entity's taxable year, or, if a partial year, then the fraction of a taxable year for which the credit is being claimed;
- (4) The North American Industrial Classification System (NAICS) code number for the business entity;
- (5) The amount of the Maryland qualified research and development expenses eligible for the Maryland cellulosic ethanol technology research and development tax credit for the applicable taxable year;
- (6) The credit amount being applied for with respect to the applicable taxable year, before allocation and certification by the Department;
- (7) A description of the general nature of the cellulosic ethanol technology research or development activities of the business entity that paid or incurred Maryland qualified research and development expenses;
- (8) The names, business addresses, home addresses, relevant qualifications, and business or employment relationship to the business entity of the persons that performed cellulosic ethanol technology research or development activities for or on behalf of the business entity during the applicable taxable year;
- (9) A description of the nature, quantities, sources, and suppliers of the materials and supplies used or consumed during the taxable year by or in connection with the cellulosic ethanol technology research or development activities of the business entity, and of the locations where those materials and supplies were used or consumed during the applicable taxable year;
- (10) A factual narrative describing the business entity and other evidence in sufficient detail to establish that the business entity actually and actively engaged in cellulosic ethanol technology research and development activities, or had or caused cellulosic ethanol technology research and development activities to be performed or conducted by third parties on behalf of the business entity, in the State during the applicable taxable year before the date of the filing of the application;
- (11) A description of the sites, buildings, and facilities where research and development are conducted;
- (12) Copies of all contracts, agreements, or other arrangements however styled for the performance of cellulosic ethanol technology research and development activities on behalf of the business entity by any third parties;
- (13) The number of full-time and part-time employees of the business entity, or of any third person or firm performing or conducting cellulosic ethanol technology research and development activities for or on behalf of the business entity, in Maryland employed at each site, building, or facility and the titles, job descriptions, and duties of each type of employee;
- (14) A detailed description of the business entity's cellulosic ethanol technology research and development activities and operations conducted, performed, or carried on by the business entity, or by any third person or firm conducting, performing, or carrying on cellulosic ethanol technology research and development activities for or on behalf of the business entity, at each site, building, or facility; and
- (15) Any other information required by the Department.

C. The Department may require that the information required by §B of this regulation be verified by an independent auditor retained by the business entity at the expense of the business entity.

## **.08 Certification of Credit.**

A. The Department shall certify to the taxpayer or the business entity the amount of the credit approved by the Department for the business entity. The Department shall issue the certification, in a form approved by the Secretary, by December 15 of the calendar year following the end of the taxable year in which the Maryland qualified research and development expenses were incurred.

B. If the total amount of the credits applied for by all business entities exceeds the maximum credit amounts available under Regulation .06 of this chapter, then the Department shall approve a credit for each business entity in an amount equal to the product of multiplying the credit applied for by the business entity times a fraction:

- (1) The numerator of which is the maximum specified under Regulation .06 of this chapter; and
- (2) The denominator of which is the total of all credits applied for by all business entities in the calendar year.

C. The determination of the Department to grant or to deny an application for a certificate is final.

## **.09 Determining Whether Research or Development is Conducted in the State.**

A. All the cellulosic ethanol technology research or development activities conducted, performed, or carried on by or on behalf of the business entity for which the business entity applies for a credit must have been performed, conducted, or carried on in the State.

B. If the business entity contracts or makes arrangements of any kind, however styled, for the performance, conduct, or carrying on of cellulosic ethanol technology research and development activities on behalf of the business entity by third parties, the person or firm performing, conducting, or carrying on cellulosic ethanol technology research or development activities for or on behalf of the business entity and for which the business entity applies for a credit must have performed, conducted, or carried on all of those cellulosic ethanol technology research or development activities in the State.

C. All supplies used in the cellulosic ethanol technology research and development activities for or on behalf of the business entity for which the business entity applies for a credit must have been consumed in the State.

D. Business entities making application for a tax credit shall maintain accounting books, records, and systems that account for cellulosic ethanol technology research and development activities and Maryland qualified research and development expenses in accordance with:

- (1) Federal and State income tax laws and regulations; and
- (2) Generally accepted accounting principles.

E. The Department shall apply a facts and circumstances analysis to determine whether a business entity has conducted, performed, or carried on in the State all the cellulosic ethanol technology research and development activities for which the business entity applies for a credit. The Department's determination will be based in substantial part on the statements and documents of the business entity contained in or appended to its application submitted in accordance with Regulation .07 of this chapter.

F. For purposes of determining eligibility for certification of tax credits, the Department shall consider the following factors:

- (1) The locations where the cellulosic ethanol technology research or development activities are performed by or on behalf of the business entity;

- (2) The nature of the business entity's interest in and control over the buildings, fixtures, and equipment used in performing or conducting the cellulosic ethanol technology research or development activities;
- (3) The identity, residence or business location, qualifications, relevant experience, demonstrated expertise, and legal and business relationship to the business entity of any third party persons or firms performing any cellulosic ethanol technology research or development activities or services on behalf of the business entity;
- (4) The nature and quantities of supplies obtained for use or used in cellulosic ethanol technology research or development activities performed or conducted by or on behalf of the business entity at each location, the sources of these supplies, whether the supplies are in fact consumed in cellulosic ethanol technology research or development activities by or on behalf of the business entity, and the locations where the supplies are consumed in cellulosic ethanol technology research or development activities by or on behalf of the business entity;
- (5) The business entity's methods and policies for accounting for the cellulosic ethanol technology research and development activities;
- (6) The scientific, environmental, and engineering merits of the business entity's Maryland qualified research and development paradigms, activities, manufacturing methods and processes, and products; and
- (7) Any other factors that the Department determines are relevant for the determination.

## **.10 Claiming the Credit.**

To claim the credit approved by the Department, a taxpayer shall:

- A. File an amended income tax return for the taxable year in which the Maryland qualified research and development expense was incurred; and
- B. Attach a copy of the Department's certification to the amended income tax return.

## **.11 Carryover of Tax Credit.**

A. If the credit allowed in any taxable year exceeds a taxpayer's State income tax for that taxable year, the taxpayer may apply the excess as a credit against the State income tax for succeeding taxable years until the earlier of:

- (1) The full amount of the excess is used; or
- (2) The expiration of the 15th taxable year after the taxable year in which the Maryland qualified research and development expense was incurred.

B. A tax credit may not be carried back to a preceding taxable year.

## **.12 Affiliated Corporations and Entities under Common Control.**

A. All members of the same controlled group of corporations, as defined in 26 U.S.C. §41(f), and all entities under common control, whether incorporated or not, shall be treated as a single taxpayer for purposes of the tax credit.

B. The credit allowable to each member shall be determined by multiplying the total credits certified by the Department for the controlled group by a fraction:

- (1) The numerator of which is the Maryland qualified research and development expenses incurred by the separate member; and

(2) The denominator of which is the total Maryland qualified research and development expenses incurred by all members of the controlled group.

C. The computation of the credit amount shall include all of the qualified research and development expenses of an acquired, consolidated, restructured, or merged entity.

### **.13 Mergers and Acquisitions.**

A. In determining the carryover of unused credits and the effect of a merger or acquisition, federal law shall be applied to the corporations as if they were separate corporations. Any provisions under federal law that would allow separate corporations that are merged or acquired to carry forward unused credits on the surviving corporation's returns shall apply to the carryover of this credit for State purposes.

B. Unused Credits.

(1) In a transaction involving an asset purchase, unused credits:

(a) Do not transfer from the target business entity to the purchaser; and

(b) Remain with the target business entity.

(2) Unused credits may not be sold or purchased.

### **.14 Short Taxable Years.**

A. Eligible Expenses. A taxpayer may only claim the credit for Maryland qualified research and development expenses incurred during its taxable year. If the business entity has a short taxable year, only the Maryland qualified research and development expenses incurred during the short taxable year are allowed on the short year return.

B. If the business entity incurs Maryland qualified research and development expenses in 2 taxable years during a calendar year, one of which is a short taxable year, the taxpayer may only claim a credit on the short taxable year return in an amount equal to the total credits certified by the Department multiplied by a fraction:

(1) The numerator of which is the Maryland qualified research and development expenses incurred during the short taxable year; and

(2) The denominator of which is the Maryland qualified research and development expenses incurred during the entire calendar year.

### **.15 Addition Modifications.**

A. Individuals. To the extent an individual is allowed a credit on the Maryland individual income tax return, the amount of the credit claimed shall be added to federal adjusted gross income to calculate the individual's Maryland adjusted gross income.

B. Corporations. To the extent a corporation is allowed a credit on its Maryland income tax return, the amount of the credit claimed shall be added to federal taxable income to calculate the corporation's Maryland modified income.

### **.16 Partnerships, S Corporations, Limited Liability Companies, Business Trusts, Estates, and Trusts.**

A. Partnerships, S Corporations, Limited Liability Companies, and Business Trusts. In the case of a subchapter S corporation, partnership, limited liability company, or business trust, the amount of the credit computed for the pass-

through entity shall be allocated among the owners as agreed to in writing by the owners. If there is no written agreement governing the allocation of the credit, the credit shall be allocated in the same proportion as other items are allocated for the taxable year.

B. Estates and Trusts. In the case of an estate or trust, the amount of the credits computed for the estate or trust for any taxable year shall be apportioned among the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each beneficiary of the estate or trust under the controlling instrument or rule of law.

C. Statements to Partners, Shareholders, Members, and Beneficiaries.

(1) Requirements. A partnership, S corporation, limited liability company, business trust, estate, or trust shall provide each of its partners, shareholders, members, or beneficiaries with an income tax statement.

(2) Form and Contents of Statement.

(a) Form. A partnership, S corporation, limited liability company, business trust, estate, or trust may elect to use a:

(i) Modified federal Schedule K-1; or

(ii) Statement prepared on its own form.

(b) Contents. In addition to the contents required under COMAR 03.04.07.04B(2), the statement shall contain the amount of each credit apportioned to the individual partner, shareholder, member, or beneficiary.

(3) Statement Attached to Return. A partner, shareholder, member, or beneficiary shall attach a copy of the statement to the income tax return on which the credit is claimed.

D. Year in which Credit is Claimed. The credit apportioned to a taxpayer under §§A—C of this regulation shall be claimed on the taxpayer's Maryland tax return in the taxable year of the taxpayer within which the taxable year of the pass-through entity ends.

## **.17 Waiver.**

The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with Tax-General Article, §10-726, Annotated Code of Maryland.

### **Administrative History**

*Effective date: April 6, 2009 (36:7 Md. R. 527)*